

Vermont Bar Examination
July, 2011
Question 3

Adam owns 20 acres of land in Shelberg, Vermont. His home is located on the property. Adam's property previously encompassed 30 acres until he sold a subdivided 10 acre parcel (the "Camp Parcel") to Betsy for the purpose of Betsy's development of Camphaven, a summer camp for children. The Camp Parcel has no frontage on any public road. Betsy told Adam of her intended use of the Camp Parcel prior to their execution of the purchase and sale contract.

Adam accesses his home via a 50-foot-wide paved driveway onto the public road, Zebra Road. His driveway ends at the 2-car garage attached to his home. Before selling the Camp Parcel to Betsy, Adam historically accessed the Camp Parcel via a gravel drive which branches off of his paved driveway at a point shortly before the paved driveway reached Adam's garage. The purchase and sale agreement for the sale of the Camp Parcel from Adam to Betsy included a provision that: "Adam will grant an easement over the Old Road, for ingress and egress from Zebra Road to the Camp Parcel." The deed from Adam to Betsy included the statement that: "Included herewith is an easement over the Old Road for Betsy's ingress and egress to the Camp Parcel."

Several days after the closing on the Camp Parcel, Adam began to see Betsy coming and going from Camp Parcel with construction materials and other supplies for the operation of Camphaven. Over a three week period, Adam saw Betsy make this trip 10 times. On each of these occasions when Adam observed Betsy coming and going, she traveled on Adam's paved driveway and on the gravel road. On two of these occasions, Adam and Betsy waved to one another but they never spoke.

Four weeks after the closing, on Monday July 11, Adam observed Betsy driving a school bus of children up his paved driveway. He ran out to meet her before she reached the turnoff onto the gravel road. Adam told Betsy that the easement in the deed was for her ingress and egress only and that any other persons coming on his property were trespassers. He also told her that she could not use his driveway or the gravel road to access the Camp Parcel at any time. He told her the "Old Road" mentioned in the deed is an abandoned trail over rough terrain that extends from Zebra Road but ends about 10 feet short of the property line separating Adam's property from the Camp Parcel. It is impassable by motor vehicle without prohibitively expensive improvements. The "Old Road" is located far from Adam's driveway and the gravel drive Betsy had previously used to access the Camp Parcel.

Betsy told Adam that Camphaven was ready to begin operation that morning. She also told him that without access to the Camp Parcel off of his driveway and the gravel road, she would suffer damages including not only the lost fees from that week's campers but also the possible destruction of the reputation of Camphaven from which she might never recover. Adam replied: "Too bad, now get off my property!"

1. Discuss the procedural remedies that may be available to Betsy to allow her to use the driveway and gravel drive for her second summer session beginning on July 25.
2. Discuss and analyze the arguments Betsy should make in order to obtain permanent relief through reformation of the easement in the deed.
3. Discuss and analyze the arguments Betsy should make to obtain an easement to access Camphaven other than through reformation of the easement in the deed.
4. If Adam were to sue Betsy for trespass, what defense(s) Betsy should raise and how should those defenses be asserted? Discuss.

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Question 4

Client comes to lawyer to seek advice. Two years ago, Friend and Client started a lawn care business. They had no written agreement. They shook hands that it would be “fifty-fifty,” and that they would each work full-time during the lawn care season. Friend then suggested to Client the idea for a business name: “Clean, Green, with a Sheen!” Client agreed, and Friend registered the trade name with the Vermont Secretary of State in Friend’s own name.

Business boomed. The trade name is now very well known in the area. Friend is no longer interested in working in the business, but is demanding half of the profits. He is threatening to sell the trade name to Rival if Client does not agree to his demands for half of the money regardless of whether Friend does any work.

1. Describe the legal relationship of Client and Friend.
2. Analyze who owns the rights to the trade name, whether Friend has the right to sell the trade name, and whether there are steps other than litigation that Client should immediately take.
3. Assume that Client and Friend cannot negotiate a resolution to their disagreements. Analyze whether Client has any right to continue the business without Friend, and the steps Client would have to take to enforce any such right.
4. Assume that after negotiations Friend sells his interest in the business and the trade name to Client. Analyze Client’s options for organizing and operating this business, and discuss your recommendation.

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Question 5

At 9 p.m. on a recent rainy evening, Vermont State Police received a phone call from Joe Citizen who advised that he had observed a male driving erratically in a green Subaru truck with Vermont license plate APC123. Mr. Citizen also advised that he had observed the Subaru nearly collide with another vehicle and that he had followed the Subaru to 15 Wildflower Terrace in Woodfield, Vermont. Police Dispatch contacted Trooper Trudeau who was already in the vicinity.

Trudeau pulled up on the street in front of 15 Wildflower Terrace at 9:15 p.m. The lights were off and there was no vehicle or any activity visible from the street. Citizen was waiting for him and repeated his account to Trudeau. After Citizen departed, Trudeau walked down the driveway toward the home. Trudeau approached the attached garage. Peering through the window of the closed garage door with a flashlight, he observed a rain-spattered black Subaru truck inside with Vermont plate ABC123. Trudeau ran a plate check, which revealed that the vehicle was registered to Doris Driver.

Trudeau then walked to the front door of the home and rang the doorbell several times. No one answered. As Trudeau turned to leave the premises, the automatic garage door opened. Trudeau approached the garage to find a woman sitting in the vehicle, with the driver's side window open. From the driveway, Trudeau identified himself and stated that he was responding to a report of erratic driving in the vicinity. The woman identified herself as Doris Driver. Trudeau asked Driver whether she had been operating the vehicle that evening. She responded that she had driven home "about 30 minutes ago," and was headed out to visit one of her neighbors. Trudeau detected a faint odor of alcohol, and observed that Driver's speech was slurred. In response to Trudeau's further questions, Driver stated that she had consumed two glasses of wine with dinner around 6 p.m. that evening, but said that she had not consumed any alcohol in the past 30 minutes.

Trudeau ordered Driver to step outside of the vehicle into the driveway to perform field sobriety tests. Driver failed the sobriety tests. Trudeau then advised Driver that he was placing her under arrest to be charged with the crime of driving under the influence (DUI). Trudeau advised Driver of her *Miranda* rights and took her to the police station. At the station, having declined representation, Driver provided a breath sample indicating that her blood alcohol content was one and a half times the legal limit.

1. Did Trooper Trudeau act lawfully when he entered Doris Driver's property and shined his flashlight into the garage? Discuss.
2. Are Doris Driver's statements in response to Trooper Trudeau's questions from the vehicle in her garage admissible against her? Discuss.
3. Did Trooper Trudeau act lawfully when he ordered Doris Driver to step outside of the garage to perform sobriety tests? Discuss.
4. Assume that Doris Driver was backing out of her driveway and onto the street when Trooper Trudeau arrived at the property. Would it have been lawful for Trudeau to conduct an investigatory stop? Discuss.